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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,643	11/14/2001	David Botstein	P2730P1C13	4960
35489	7590	12/05/2008		
GOODWIN PROCTER LLP 135 COMMONWEALTH DRIVE MENLO PARK, CA 94025			EXAMINER KEMMERER, ELIZABETH	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID BOTSTEIN,
AUDREY GODDARD, PAUL J. GODOWSKI,
AUSTIN L. GURNEY, MARGARET ANN ROY
and
WILLIAM I. WOOD

Application No. 09/992,643
Technology Center 1600

Mailed: December 5, 2008

Before PAMELA S. BENNETT, *Review Team Paralegal*
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on October 15, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith

being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF, HEADINGS

A review of the file indicates that the Appeal Brief filed April 14, 2008 does not comply with 37 CFR § 41.37(c) because it does not contain all required heading items. Specifically, 37 CFR § 41.37(c)(1) requires the following heading items in the following order:

- (i) *Real party in interest.*
- (ii) *Related appeals and interferences.*
- (iii) *Status of claims.*
- (iv) *Status of amendments.*
- (v) *Summary of claimed subject matter.*
- (vi) *Grounds of rejection to be reviewed on appeal.*
- (vii) *Argument.*
- (viii) *Claims appendix.*
- (ix) *Evidence appendix.*
- (x) *Related proceedings appendix.*

An in-depth review of the Appeal Brief indicates that the following section is missing from the Appeal Brief filed April 14, 2008 and/or is not complete:

- (ii) *Related appeals and interferences.*

Specifically, the Appeal Brief fails to mention Application Serial No. 09/941,992,¹ which contains an Appeal Brief filed on April 10, 2008. A paper that is in compliance with 37 CFR § 41.37(c) correcting the “Related appeals and interferences” section is required. Submission of an entire new Appeal Brief is not necessary.

EXAMINER’S CONSIDERATION OF REPLY BRIEF

A Reply Brief and Request for Oral Hearing were filed in this application on August 12, 2008. There is no evidence on the record indicating that the Examiner has considered the Reply Brief in accordance with 37 CFR § 41.43(a)(1) and MPEP § 1208, part II.

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed April 14, 2008 defective;
- 2) for notification to appellants to file a paper in compliance with 37 CFR § 41.37 which corrects the “Related appeals and interferences” section;
- 3) for consideration of said paper;
- 4) for acknowledgement and consideration of the Reply Brief filed August 12, 2008 as indicated above; and
- 5) for such further action as may be appropriate.

¹ The present application is a continuation of 09/941,992.

Application No. 09/992,643

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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